

SYNOPSIS

PURCHASERS' USE TAX – REASONABLE CAUSE SHOWN FOR WAIVER OF ADDITIONS – Petitioner's mistaken but good faith belief that being financed with county bonds constituted county ownership constitutes reasonable cause for waiver of additions to tax pursuant to W. Va. Code § 11-10-18(a)(1)-(2) [1986].

FINAL DECISION

The Director of the Field Auditing Division of the Commissioner's Office issued a purchasers' use tax assessment against the Petitioner. This assessment was for the period of July 1, 2000 through June 30, 2003, for tax, interest, through August 31, 2003, and additions to tax.

Written notice of this assessment was served on the Petitioner.

Thereafter, by mail postmarked May 21, 2003, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment. See W. Va. Code § 11-10A-8(1) [2002].

Prior to the time of the scheduled hearing Petitioner waived its right to a hearing in person and sent invoices indicating that the tax assessment should be reduced. Petitioner also requested that the interest and additions to tax be waived.

FINDINGS OF FACT

Upon examination, Commissioner's counsel agreed to accept Petitioner's documentation showing that certain transactions were indeed exempt from use tax.

DISCUSSION

Because interest may not be waived under statutory law, the sole issue is whether the Petitioner has shown that its failure to pay use tax on a timely basis resulted from reasonable cause and not from willful neglect pursuant to W. Va. Code § 11-10-18(a)(1)-(2) [1986].

Based upon Petitioner's evidence it is clear that the nursing home operated under the mistaken but good faith belief that, because it was financed by county bonds, it was, therefore, county owned and thus exempt from sales or use taxes.

CONCLUSIONS OF LAW

Based upon all of the above it is **DETERMINED** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon the petitioner-taxpayer to prove that its failure to file returns or to pay tax due resulted from reasonable cause and was not due to willful neglect. See W. Va. Code § 11-10-18(a)(1)-(2) [1986].
2. The Petitioner in this matter has carried that burden of proof.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the purchasers' use tax assessment issued against the Petitioner for the period of July 1, 2000 through June 30, 2003, should be and is hereby **MODIFIED** in accordance with the above Conclusions of

Law for tax, interest, on the revised tax, updated through December 31, 2003, for a total revised liability; the Additions To Tax are, however, **VACATED** in full.

Interest continues to accrue on this unpaid purchasers' use tax at a daily rate until this particular tax liability is fully paid.